

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY A. ERICKSON,

Petitioner,

No. CIV S 03-2595 LKK CMK P

vs.

JULIO VALADEZ, et al.,

Respondent.

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 1997 conviction of second-degree murder and sentence of fifteen years to life. Petitioner claims that his constitutional rights were tainted by the trial court giving erroneous jury instructions. He further claims that his constitutional rights were violated when the California Court of Appeals reinstated his jury verdict and asserts that this court should reverse a California Supreme Court decision construing that state's murder statute.

I. Background

Petitioner was the driver in a fatal car accident, which occurred in the early morning hours of January 15, 1996. Harley Harmon was lying in bed reading when he heard what he believed to be a car traveling on Fruitvale road in front of his house; Harmon then

1 heard a loud “whump.” Harmon was certain that he heard no braking noises prior to the
2 “whump.” After calling 911, Harmon approached the collision scene, where he saw petitioner in
3 the wrecked car, trapped on the driver’s side. Noticing that a fire had broken out in the car,
4 Harmon tried to pull petitioner from the car; however, petitioner’s foot appeared to be caught on
5 something inside. Harmon finally yanked petitioner loose from the burning car. The entire
6 vehicle burst into flames.

7 Petitioner, who was now only wearing one shoe, kept repeating that he had not
8 been driving the car. Petitioner mentioned a friend in the car, but, by then, the car was engulfed
9 in flames. Petitioner informed an emergency responder at the scene that he had been riding in
10 the back seat of the vehicle and that he was not driving. The responder, who had looked at the
11 wreckage, did not understand how petitioner had gotten out if someone else was driving. The
12 responder noted that petitioner was wearing only one shoe and that petitioner smelled of alcohol.

13 Petitioner told a second emergency responder on the trip to the hospital that he
14 could not remember the collision and was sleeping in the backseat before it occurred. He
15 admitted to consuming two or three beers and several shots. During the trip to the hospital,
16 petitioner answered several questions and appeared coherent.

17 The emergency room physician who treated petitioner at the hospital opined that
18 petitioner was clearly intoxicated. Petitioner told the physician that he used alcohol daily and
19 occasionally used marijuana and methamphetamine. According to petitioner, he had no
20 recollection of the accident. Laboratory analysis of petitioner’s blood and urine samples
21 revealed that petitioner had been drinking. Experts for the prosecution testified that petitioner
22 was impaired due to his use of alcohol and other illicit drugs.

23 Sheriff’s Deputies responding to the accident observed the burnt remains of two
24 people in the wreckage; one in the front passenger seat, and another person in the rear seat
25 leaning forward. While inspecting the car the next morning, the investigating officer found a
26 shoe that had been jammed under the accelerator panel. The shoe was later matched with

1 another shoe that petitioner had been wearing at the collision scene. When investigating officers
2 took petitioner's statement, petitioner continued to indicate that he could not remember where he
3 was seated in the car before the collision and whether he had been driving. Petitioner did admit
4 to being the owner of the car.

5 Petitioner was charged with two counts of murder (counts 1 & 2) and two counts
6 of gross vehicular manslaughter (counts 3 & 4.). At petitioner's trial, several of his friends
7 reluctantly testified that they had observed him consuming alcohol and driving on the night in
8 question. For the limited purpose of proving implied malice, the prosecution offered evidence
9 of petitioner's role in a prior traffic collision in which one person died and another was seriously
10 injured.

11 The prior incident resulted in the filing of a juvenile petition in which charges of
12 gross vehicular manslaughter and evading an officer causing injury or death were sustained. In
13 the prior traffic collision, petitioner was driving a "souped-up" Camero, which he sometimes
14 drove at the Sacramento raceway. In attempting to evade a traffic stop, petitioner drove through
15 a residential neighborhood at speeds in excess of 100 miles per hour. Several police officers
16 joined the chase. Finally, the car became airborne and left the roadway. The two passengers in
17 the car were ejected by the impact; one, Gale Frisbee was killed, while the other, Michael Ogier,
18 was seriously injured.

19 On February 5, 1997, the jury found petitioner guilty of murder (counts 1 & 2)
20 and acquitted him of the gross vehicular manslaughter charges (counts 3 & 4.). On August 15,
21 1997, the court granted petitioner's amended motion for a new trial in part and reformed the
22 verdicts to reflect two convictions for gross vehicular manslaughter while intoxicated. On
23 September 12, 1997, petitioner was sentenced to a term of twelve years.

24 Both petitioner and respondent filed notices of appeal. By opinion filed June 7,
25 1999, in case number C027606, the California Court of Appeal, Third Appellate District,
26 reversed the order granting the amended notice for a new trial, rejected petitioner's contentions

1 challenging the murder convictions, and remanded the matter to the trial court for the
2 reinstatement of the jury's murder verdicts and pronouncement of sentence. On March 2, 2000,
3 after remand and despite the appellate court's explicit directive, the state trial judge granted a
4 second motion for a new trial.

5 By opinion filed May 19, 2000, in case number C035081, the California Court of
6 Appeal issued a peremptory writ of mandate which: (1) vacated the March 2, 2000 order
7 granting a new trial; (2) denying the motion for a new trial; (3) directing pronouncement of
8 sentence "for the offenses the jury found [petitioner] guilty of;" and (4) assigning the case to a
9 different superior court judge. On October 6, 2000, petitioner was sentenced to a term of fifteen
10 years to life. He appeals his underlying conviction and this sentence.

11 II. Standards for Granting Habeas Relief

12 _____ An application for a writ of habeas corpus by a person in custody under a
13 judgment of a state court can be granted only for violations of the Constitution or laws of the
14 United States. See 28 U.S.C. § 2254(a). Federal habeas corpus relief also is not available for any
15 claim decided on the merits in state court proceedings unless the state court's adjudication of the
16 claim:

17 (1) resulted in a decision that was contrary to, or involved an unreasonable
18 application of, clearly established federal law, as determined by the Supreme Court
of the United States; or

19 (2) resulted in a decision that was based on an unreasonable determination of the
20 facts in light of the evidence presented in the State court proceeding.

21 See 28 U.S.C. § 2254(d) (referenced herein in as " § 2254(d)" or "AEDPA). See Ramirez v.
22 Castro, 365 F.3d 755, 773-75 (9th Cir.2004) (Ninth Circuit affirmed lower court's grant of habeas
23 relief under 28 U.S.C. § 2254 after determining that petitioner was in custody in violation of his
24 Eighth Amendment rights and that § 2254(d) does not preclude relief); see also Lockyer v.
25 Andrade, 538 U.S. 63, 70-71 (2003) (Supreme Court found relief precluded under § 2254(d) and
26 therefore did not address the merits of petitioner's Eighth Amendment claim). Courts are not

1 required to address the merits of a particular claim, but may simply deny a habeas application on
2 the ground that relief is precluded by 28 U.S.C. § 2254(d). See Lockyer, 538 U.S. at 71
3 (overruling Van Tran v. Lindsey, 212 F.3d 1143, 1154-55 (9th Cir.2000) in which the Ninth
4 Circuit required district courts to review state court decisions for error before determining
5 whether relief is precluded by § 2254(d)). It is the habeas petitioner's burden to show he is not
6 precluded from obtaining relief by § 2254(d). See Woodford v. Visciotti, 537 U.S. 19, 25 (2002).

7 The “contrary to” and “unreasonable application” clauses of § 2254(d)(1) are
8 different. As the Supreme Court has explained:

9 A federal habeas court may issue the writ under the “contrary to” clause if the state
10 court applies a rule different from the governing law set forth in our cases, or if it
11 decides a case differently than we have done on a set of materially
12 indistinguishable facts. The court may grant relief under the “unreasonable
13 application” clause if the state court correctly identifies the governing legal
14 principle from our decisions but unreasonably applies it to the facts of the
15 particular case. The focus of the latter inquiry is on whether the state court's
16 application of clearly established federal law is objectively unreasonable, and we
17 stressed in Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389
18 (2000) that an unreasonable application is different from an incorrect one.

15 Bell v. Cone, 535 U.S. 685, 694 (2002). A state court does not apply a rule different from the law
16 set forth in Supreme Court cases, or unreasonably apply such law, if the state court simply fails to
17 cite or fails to indicate an awareness of federal law. See Early v. Packer, 537 U.S. 3, 8 (2002).

18 The court will look to the last reasoned state court decision in determining whether
19 the law applied to a particular claim by the state courts was contrary to the law set forth in the
20 cases of the United States Supreme Court or whether an unreasonable application of such law has
21 occurred. See Avila v. Galaza, 297 F.3d 911, 918 (9th Cir.2002), cert. dismissed, 538 U.S. 919
22 (2003). Where the state court fails to give any reasoning whatsoever in support of the denial of a
23 claim arising under Constitutional or federal law, the Ninth Circuit has held that this court must
24 perform an independent review of the record to ascertain whether the state court decision was
25 objectively unreasonable. See Himes v. Thompson, 336 F.3d 848, 853 (9th Cir.2003). In other
26 words, the court assumes the state court applied the correct law, and analyzes whether the

1 decision of the state court was based on an objectively unreasonable application of that law. It is
 2 appropriate to look to lower federal court decisions to determine what law has been “clearly
 3 established” by the Supreme Court and the reasonableness of a particular application of that law.
 4 See Duhaime v. Ducharme, 200 F.3d 597, 598 (9th Cir.1999).

5 III. Arguments and Analysis

6 A. Jury Instructional Error (Claims 1-5)

7 _____ Petitioner claims that his right to a fair trial, arising under the Due Process Clause
 8 of the Fourteenth Amendment was compromised by erroneous jury instructions. Federal habeas
 9 courts do not grant relief, as might a state appellate court, simply because a jury instruction may
 10 have been deficient. The only question for the federal court is whether the allegedly ailing
 11 instruction by itself so infected the entire trial that the resulting conviction violates due process.
 12 See Donnelly v. DeChristoforo, 416 U.S. 637, 642-643 (1974). A violation of due process occurs
 13 only if a trial is fundamentally unfair. See Estelle v. McGuire, 502 U.S. 62, 72-73 (1991).

14 1. Alternative Offenses

15 Petitioner’s first claim is that the trial court erred in instructing the jury on the
 16 issue of alternative offenses. The trial court instructed the jury that the two charged counts of
 17 second-degree murder were alternative statements of the two additionally charged counts of gross
 18 vehicular manslaughter while intoxicated. Petitioner argues that “[g]iven that gross vehicular
 19 manslaughter while intoxicated is not a lesser included offense of murder charges and a
 20 conviction for both can be had, the trial court erred by instructing the jury that the two offenses
 21 were alternative, thereby divesting [sic] sentencing jurisdiction over a jury finding on that
 22 issue.... Petitioner was prejudiced by not having a verdict actually rendered on those counts.”
 23 (Pet., pp. 6-7.) The California Court of Appeal rejected this claim noting:

24 The information listed four homicide counts: counts I and II charged
 25 Erickson with second degree murder and counts III and IV charged him with gross
 26 vehicular manslaughter while under the influence of alcohol and/or drugs. Under
 the state of the law at the time, the two counts of gross vehicular manslaughter
 while intoxicated (GVMWI) were deemed lesser included offenses to the murder

1 charges. The prosecutor nevertheless wanted the jury to return guilty verdicts on
2 all four counts if it found them to be proven. The defense vociferously objected. Defense counsel
3 urged that since the two charged GVMWI charges were lesser included to the two murder counts,
4 the court should make clear that each homicide count should be separately considered; he
5 submitted verdict forms and instructions expressly telling the jury that each of the four possible
6 vehicular manslaughter crimes was a lesser included offense to that of second degree murder.

7 While the court did not use Erickson's verdict forms, it did instruct the
8 jurors, pursuant to CALJIC No. 17.03, that the murder counts and the charged
9 vehicular manslaughter counts were "made in the alternative" ; [sic] that if they
10 found the defendant committed an act constituting one of the crimes, it was their
11 duty to decide which one; and that "if you find the defendant guilty of one, you
12 must find him not guilty of the other." The jurors were further informed that if
13 they had doubt, as to whether the offenses were murder or manslaughter, they were
14 to give the defendant the benefit of the doubt and find him guilty of manslaughter.

15 Erickson now complains that giving CALJIC No. 17.03 was error. He
16 claims that it was wrong to tell the jury to choose among alternative homicide
17 counts, since the California Supreme Court has now held that GVMWI is not a
18 lesser included offense to second degree murder.

19 We find no error in the giving of the instruction. The holding in Sanchez
20 does not affect the propriety of CALJIC No. 17.03 as given here. As the use note
21 to CALJIC No. 17.03 (6th ed. 1996) at page 566 states. "This instruction is to be
22 given where two or more counts are based on the same criminal act and the
23 defendant is charged under alternate theories, there having been but one crime
24 committed." [emphasis added]

25 It is indisputable that this criterion applied in this case. Second degree
26 murder and GVMWI were alternative verdicts based upon one criminal act of
committing homicide while driving a motor vehicle. This was true regardless of
whether GVMWI was a lesser included offense to murder – in other words,
CALJIC No. 17.03 was applicable both before and after Sanchez. It did not
mislead the jury.

(Pet. Ex. D, pp. 10-13 (internal citations omitted).)

27 The Court of Appeal's determination that the instruction on alternative offenses
28 did not mislead the jury does not reflect an objectively unreasonable application of federal
29 principles. Indeed, petitioner never asserts that the jury applied the instruction in such a way as to
30 violate due process. Instead, his main argument appears be that had the jury been properly
31 instructed, the jury would not have erroneously acquitted him on the gross vehicular
32 manslaughter charges, which would have given the trial judge "original jurisdiction" to throw out
33 the jury's verdict on the second-degree murder charges and to only sentence petitioner on the
34 manslaughter charges. (Pet. 6-7.) Petitioner's first claim does not satisfy 28 U.S.C. § 2254(d)
35 and verges on frivolous.

2. Unduly Coercive Jury Admonishment

In his second claim of error, petitioner claims that comments made by the trial judge, after a lone juror indicated an unwillingness to participate in the decision, were improperly coercive. Criminal defendants being tried by a jury are entitled to an uncoerced verdict from that jury. See Lowenfield v. Phelps, 484 U.S. 231, 241 (1988). A jury verdict that has been reached due to the trial judge's coercive statements to the jury denies the defendant his right to a fair trial and an impartial jury. See id. at 237. To determine whether a judge's comments were coercive, a reviewing court must evaluate them in their context and under all the circumstances. See id.

The California Court of Appeal discussed the context and circumstances of the trial judge's comments to the jury and rejected petitioner's coercion claim for the following reasons:

After reaching and announcing that they had reached a verdict, the jury returned to the courtroom and the verdict forms were submitted to the court. Before the verdict could be read, Juror No. 2 interrupted by stating "Excuse me, Wait a minute." At this point the court, noticing that the juror "seemed to be in tears" and "manifesting [a] very emotional reaction to the presentation of the verdict," directed the bailiff to have the jury retire to the jury room to reconsider its verdict. The court then received a note from the foreman explaining that Juror No. 2 could not separate the law from her own personal feelings, and therefore "does not want to be part of the decision."

The prosecutor immediately sought removal of Juror No. 2. The trial judge decided to interview her out of the presence of the other jurors. Juror No. 2 explained that although she could initially separate her personal feelings from the law, as the trial progressed "my heart...just went out to the defendant and I can't separate that." She added, "I'm not going to get up every morning knowing that I was part of this verdict." In response to the judge's inquiry, Juror No. 2 stated that she was able to discuss the evidence and exchange views with her fellow jurors, but they have told her "my feelings don't matter. We have to look at the law....I have to look at the evidence and what it proves and I can't allow my personal feelings or my emotions to intermix, and I can't separate them. I can't sit up here and give a verdict and say 'I convict.' I can't do that." Despite her request to be relieved of her duties, the court refused to discharge Juror No. 2., noting that she was able to participate in deliberations with the others and that the mere fact she disagreed with the majority was not good cause for her removal.

The jury was then brought back into the courtroom. The judge announced that he had had a discussion with Juror No. 2, "and as a result of our discussion I have concluded that she is both willing and able to perform the function of a Juror...." The judge then gave these words of advice: "Now I'm aware of the fact that there may be some emotional tension which attends this process. That's not uncommon. Matter of fact, it's very common. The mere fact that there may be some feelings, perhaps some strong feelings,

1 about the case or some aspect of the case should not get in the way of your performance of your
 2 basic function, that being to sit down cool[ly] and calmly with all twelve of you there, discuss the
 evidence, discuss the instructions, see if you cannot reach some agreement as a result of this
 process of discussion.

3 Now, in saying this to you, I don't mean to imply that I wanted you to go
 reach an agreement of any kind. *But I do want to emphasize what is the proper*
 4 *function of a juror—of every juror and that is the function or process of analyzing,*
discussing, accommodating the views of others and trying to reach a consensus, if
 5 *that's possible, as a result of discussion.*

6 So, I am going to ask you to return to the jury room, resume your
 deliberations and try to be a little tolerant of those among you who may feel some
 emotional tension in connection with this process. So you are now excused and
 7 asked to retire to the jury room.”

8
 A short while later, after requesting and receiving a rereading of the court's
 comments quoted above, the jury returned with a unanimous verdict.

9 Erickson argues the court's comments, especially those italicized above,
 were unduly coercive. He claims that since Juror No. 2 was in the spotlight as
 10 having held the minority view, the admonition to be “accommodating [to] the
 views of others and trying to reach a consensus” put undue pressure on Juror No. 2
 11 to “displace her independent judgment in favor of considerations of compromise
 and expediency...”

12 We disagree with Erickson's spin on the court's comments. Far from
 putting pressure on Juror No. 2 to agree with the majority, we read the court's
 13 remarks as an admonition to all jurors to be tolerant of differences of opinion
 among then and to “cool[ly] and calmly” discuss the evidence and instructions in
 14 an effort to see if agreement was possible. The fact that the court encouraged each
 juror to be “accommodating” to the views of others, read in the proper context, did
 15 not imply that any juror should surrender his or her independent judgment to the
 will of the majority, but that each juror should be tolerant of, and open to, the
 16 views of others, especially those who were emotionally involved in the
 deliberative process.

17
 Here, the court went out of its way to remind the jurors that “in saying this to you,
 18 *I don't mean to imply that I want you to reach an agreement of any kind.*” Read
 reasonably, the court's comments represented nothing more than an effort to
 19 defuse the emotional atmosphere which had crept into the deliberations, and to
 urge the jurors to deliberate in a calm, collegial, and tolerant environment.

20 Based on the foregoing, we find Erickson's allegation of jury coercion to
 be without merit. For the same reasons, we reject Erickson's corollary claim that
 21 the court erred in failing to give defense counsel's request for a curative
 instruction. Because the court's comments were entirely appropriate, there was no
 22 need to “cure” them.

23 (Pet, Ex. D, pp 17-20 (emphasis in original.) The state court's rejection of petitioner's claim of
 24 jury coercion does not reflect an objectively unreasonable application of the appropriate federal
 25 principles. An examination of the context of the court's statements reveals that the comments
 26

were not coercive. For example, when interviewing Juror No. 2 outside of the presence of the other jurors, the judge stated "...I'm going to be talking with you for a few minutes. And in doing this, I want you to understand that I have no absolutely no interest in attempting to cause you to change your mind or to influence you in any way at all..." (RT 1408.) The judge did not pressure the jurors to arrive at any verdict; he assured them that he did not mean to imply that they should reach an agreement of any kind. See U.S. v. U.S. Gypsum Co., 438 U.S. 422, 461 (1978). In light of the court's repeated assurances to Juror No. 2 that she was not required to change her mind and given the context and circumstances of the comments, the court cannot find that the Court of Appeal's decision was an unreasonable application of clearly established federal law or an unreasonable determination of the facts. See Early v. Packer, 537 U.S. 123 (2002). Accordingly, the court recommends that petitioner's second claim be denied.

3. Malice and Proximate Cause (claims 3 &4)

Petitioner argues that the second-degree murder instructions given in his case¹ were: (1) insufficient to establish implied malice as well as confusing; and (2) failed to satisfactorily instruct on the requirement to establish proximate causation. He claims that the trial court should have, sua sponte, given additional instruction on probable cause.² The California Court of Appeal rejected this claim, noting:

///

¹The instruction given was: CALJIC No. 8.31 which provides "Murder of the second degree is [also] the unlawful killing of a human being when: ¶ 1. The killing resulted from an intentional act, ¶ 2. The natural consequences of the act are dangerous to human life, and ¶ 3. The act was deliberately performed with knowledge of the danger to, and with conscious disregard, for human life. When the killing is the direct result of such an act, it is not necessary to prove that the defendant intended that the act would result in the death of a human being."

² Specifically, petitioner argues that the following instructions should have been given: (1) CALJIC No. 8.55 which provides "To constitute [murder][or][manslaughter] there must be, in addition to the death of a human being, an unlawful act which was a cause of that death;" and (2) CALJIC No. 3.40 which provides "The criminal law has its own particular way of defining cause. A cause of death is an [act][or][omission] that sets in motion a chain of events that produces as a direct, natural, and probable consequence of the [act][or][omission] the death and without which the death would not occur."

1 Erickson next faults the trial court for failing, sua sponte, to give additional
 2 proximate cause instructions. He argues that the court should have augmented the
 3 homicide instructions with CALNIC Nos 8.55 and 3.40. He suggests these
 4 instructions were essential because there was evidence from which the jury could
 conclude that the crash (and hence the deaths of Erickson's passengers) was
 caused by some mechanical defect in the car, rather than Erickson's reckless
 driving and/or inebriation.

5 The argument is flawed. First, CALJIC No. 8.31 as given here correctly
 6 conveyed the causation concept to the jury as it related to second degree murder.
 The California Supreme Court had held that this instruction, which requires that
 7 the defendant's act be "one 'whose natural consequences' are dangerous to life and
 8 that the killing be the 'direct result of such an act,'" correctly states applicable law.
 Since CALJIC was sufficient to guide the jury, the omission of the more
 amorphous proximate cause instructions urged by Erickson cannot constitute
 reversible error.

9 (Pet., Ex. D, pp. 17-16. The Appeal Court went on to note that Erickson's argument that the
 10 "tangential ruminations of the trial judge in granting what turned out to be an invalid new trial
 11 order" were "weak support indeed for a claim of instructional error." (*Id.* at 16.)

12 The state court's rejection of petitioner's claim does not reflect an objectively
 13 unreasonable application of the appropriate federal principles. When a petitioner argues that a
 14 trial court failed to given an instruction, his burden is especially heavy because "[a]n omission or
 15 an incomplete instruction is less likely to be prejudicial than a misstatement of the law."

16 Henderson v. Kibbe, 431 U.S. 145, 155 (1977). Here, petitioner has not shown that the omission
 17 of other proximate cause instructions rendered his trial fundamentally unfair. Accordingly, the
 18 court recommends that this claim be denied.

19 4. Failure to Give Lesser Included Offense Instruction

20 Petitioners' final argument of instructional error is that the trial court erred by
 21 failing to instruct the jury that gross vehicular manslaughter while intoxicated (GVMWI) was a
 22 lesser included offense of second degree murder. As noted above, when a petitioner argues that a
 23 trial court failed to give an instruction, his burden is especially heavy because an omitted
 24 instruction "is less likely to be prejudicial than a misstatement of the law." Henderson, 431 U.S.
 25 at 155. The Court of Appeal did not expressly discuss whether petitioner's federal rights were
 26 denied by failure to instruct the jury on the lesser included offense. (Pet. Ex. D.) Petitioner's

1 claim was denied by the California Supreme Court without comment. (Answer, Ex. F.)

2 The state court's rejection of this claim does not reflect an objectively
3 unreasonable application of the appropriate federal principles. The Ninth Circuit has held that the
4 failure to give lesser included offense instruction in non-capital cases presents no federal
5 question. See Windham v. Merkle, 163 F.3d 1092 (9th Cir. 1988). Accordingly, the court
6 recommends that this claim be denied.

7 B. Court of Appeal's Decision Violated Due Process

8 Plaintiff argues that the Court of Appeal's decision which restored the jury's
9 verdict of two counts of second-degree murder after the trial judge had reduced them to
10 manslaughter violated his due process rights. (Pet., pp. 11-13.) Petitioner argues that the Court
11 of Appeal abused its discretion in finding that the trial judge's decision was an abuse of his
12 statutory discretion pursuant to California Penal Code section 1181. Petitioner points to no
13 federal case law or constitutional provision to support his claim, but instead claims that fairness
14 requires this court to exercise jurisdiction over his claim.

15 Federal habeas relief may be granted only for violations of state law and will not
16 be granted for erroneous applications of state law. See Engle v. Issac, 456 U.S. 107, 119 (1982).
17 Federal courts are not designed to sit as additional appellate reviewers of the judgments of state
18 courts. See e.g., Bianchi v. Rylaarsdam, 334 F.3d 895, 898 (9th Cir. 2003)(stating that the
19 Rooker-Feldman doctrine prohibits a federal district court from exercising subject matter
20 jurisdiction over a suit that is a de facto appeal from a state court judgment). As a general rule,
21 the interpretation of state law is a matter best left to the state courts. See Milton v. Wainwright,
22 407 U.S. 371, 377 (1972). Federal courts should follow the state court's interpretation of state
23 law. See California v. Freeman, 488 U.S. 1311 (1989).

24 Petitioner's claim does not raise a federal issue; the court therefore recommends
25 that this claim be denied.

26 ///

1 C. Fundamental Fairness Claim

2 Petitioner's final argument is that "[t]he case of People v. Watson, supra, 30 Cal
3 3d 290, violates fundamental fairness," and, for that reason, this court should "order the State
4 Legislature to remove the case from the manslaughter statutes and reverse Watson as a violation
5 of several provisions of the constitutional rights to fundamental fairness at trial." (Pet., pp 13-16.)
6 Watson held that when conduct resulting in a vehicular homicide can be characterized as a
7 "wanton disregard for life" and the facts demonstrate a "subjective awareness of the risk created,"
8 malice may be implied within the meaning of California Penal Code section 188, and a murder
9 charge is appropriate. People v. Watson, 30 Cal.3d 290, 298, 637 P.2d 279, 284 (Cal. 1981).
10 Petitioner believes that his crime was more appropriately characterized as "gross vehicular
11 manslaughter" and suggests that this court reduce his crime to such offense because the California
12 Supreme Court's definition of implied malice is "constitutionally invalid."

13 As noted above, petitioner's contention that the state court erred in its application
14 of the law does not raise a federal question. The construction of a state statute is an issue for the
15 California state courts. A federal writ is not available for an alleged error in the interpretation or
16 application of state law. See Estelle v. McGuire, 502 U.S. 62, 67 (1991). Accordingly, the court
17 recommends that this claim be denied.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///


26 ///

1 IV. Conclusion

2 In accordance with the above, IT IS HEREBY RECOMMENDED that petitioner's
3 application for a writ of habeas corpus be denied.

4 These findings and recommendations are submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
6 after being served with these findings and recommendations, petitioner may file written
7 objections with the court. The document should be captioned "Objections to Magistrate Judge's
8 Findings and Recommendations." Petitioner is advised that failure to file objections within the
9 specified time may waive the right to appeal the District Court's order. See Martinez v. Ylst, 951
10 F.2d 1153 (9th Cir. 1991).

11
12 DATED: October 19, 2006

13
14 
15 **CRAIG M. KELLISON**
16 UNITED STATES MAGISTRATE JUDGE
17
18
19
20
21
22
23
24
25
26